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**BEFORE THE ARIZONA POWER
AND TRANSMISSION LINE SITING COMMISSION**

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY, IN CONFORMANCE WITH
THE REQUIREMENTS OF ARIZONA
REVISED STATUTES 40-360 ET SEQ., FOR
A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AUTHORIZING THE
OCOTILLO MODERNIZATION PROJECT,
WHICH INCLUDES THE INSTALLATION
OF FIVE 102 MW GAS TURBINES AND
THE CONSTRUCTION OF TWO 230-
KILOVOLT GENERATION
INTERCONNECTIONS AND OTHER
ANCILLARY FACILITIES, ALL LOCATED
WITHIN THE BOUNDS OF THE EXISTING
OCOTILLO POWER PLANT SITUATED ON
PROPERTY OWNED BY ARIZONA PUBLIC
SERVICE COMPANY AND LOCATED AT
1500 EAST UNIVERSITY DRIVE, TEMPE,
ARIZONA, IN MARICOPA COUNTY.

DOCKET NO. L-00000D-14-0292-00169

Case No. 169

**MEMORANDUM REGARDING THE
SCOPE AND JURISDICTION OF
ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING
COMMITTEE PROCEEDINGS**

Arizona Corporation Commission

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As requested by Chairman Foreman, Applicant, Arizona Public Service Company ("APS" or "Company"), submits this memorandum addressing anticipated issues regarding the jurisdiction of the Arizona Power Plant and Transmission Line Siting Committee ("Committee") and the proper scope of the Committee's proceedings regarding APS's Ocotillo Modernization Project.

The Committee does not have jurisdiction over rates, utility resource planning or procurement processes. It is not charged with determining amongst alternative types of resources and technologies. Nor is it charged with determining the proper allocation among resources. Indeed, the predominate charge of the Committee is to determine the environmental compatibility of a proposed transmission line or power plant project. The Committee may also as discussed below, consider the need for such project. And while it is true that the Committee makes an evidentiary record for the Arizona Corporation Commission ("Commission"), it is important that such record is focused on those

1 matters jurisdictional to the Committee and other matters directly helpful and applicable
2 to the Commission's subsequent review of the Committee's decision.

3 **A. The Committee's Jurisdiction Derives From Statute and is Focused on the**
4 **Environmental Compatibility of the Proposed Site.**

5 The jurisdiction of the Commission and Committee over the siting of a power
6 plant (100 MW or greater) or transmission line (115 kV or greater) is derived from
7 statute, not the Constitution. Specifically, A.R.S. § 40-360.01 provides that the
8 Commission "shall establish a power plant and transmission line siting committee." A
9 review of § 40-360 *et seq.* demonstrates that the Committee's focus is on the
10 environmental compatibility of the site proposed by the utility and not the broader issues
11 of rate making, procurement or resource planning that fall within the Commission's
12 exclusive purview.

13 A review of the statutory scheme from which the Committee obtains its
14 jurisdiction reveals that it is narrowly focused on environmental issues, with two limited
15 exceptions discussed below. Specifically, the statute provides a process for a utility to
16 apply for and for the Committee to review, and if appropriate grant, a "certificate of
17 environmental compatibility" ("CEC") that is subject to Commission approval. The
18 very title of the document to be issued by the Committee is telling and illustrates the
19 Committee's sole charge. Second, the focus of the Committee's proceedings as
20 evidenced in § 40-360.07 and § 40-360.06 is on the environmental compatibility "with
21 respect to the site." A review of the factors contained in § 40-360.06 to be considered
22 by the Committee demonstrates they are all primarily related to the environmental
23 impacts of the proposed project **on the site**. Even the "catch-all" provision in paragraph
24 9 of § 40-360.06, which says "any additional factors that require consideration under
25 applicable federal and state laws pertaining to any such site" is narrowly limited to
26 factors pertaining to "the site." A.A.C. Rule 14-3-219 is in accord and provides
27 additional evidence that the Committee and the hearing should be focused on the
28 environmental impacts of the proposed site.

1 In reaching its conclusion as to the environmental compatibility of the proposed
2 site, the Committee also considers technical practicability and costs. First, in A.R.S. §
3 40-360.06.7, the Committee considers “[t]he technical practicability of achieving a
4 proposed object.” Applied here, that means that the Committee may consider whether
5 the proposed project can meet APS’s objectives, including whether the project assists in
6 meeting the Company’s identified needs for peaking capacity and renewable integration,
7 among others. Note that under the statute the Committee is not asked to choose between
8 alternative technologies, but rather to consider whether the technology chosen by the
9 utility and proposed in its application is a practicable solution to achieve the proposed
10 objective. The Committee may also consider “previous experience with the equipment
11 and methods available for achieving the proposed objective.” Second, under A.R.S. §
12 40-360.06.8, the Committee shall consider “[t]he estimated cost of the facilities and site
13 as proposed by the applicant.” The intent of this provision is to require the Committee
14 to consider the cost implications of any changes to the facilities or site imposed by the
15 Committee in the CEC. *See also* A.R.S. § 40-360.04.E and A.A.C. R14-3-213.E.

16 The line siting statutes do not invest the Committee with rate making jurisdiction.
17 Rate making authority belongs exclusively to the ACC. *See* Arizona Constitution,
18 Article 15. Even the Commission itself, which has exclusive jurisdiction over rate-
19 making, cannot do so in a Line Siting Committee proceeding because that would violate
20 its own rules on how rate cases are processed. Consequently, issues such as prudence of
21 the investment, right to recover the investment and how rates are impacted are not
22 appropriate issues for a Line Siting Committee proceeding.

23 Similarly, the Commission, not the Committee, has jurisdiction over utility
24 resource planning. *See* A.A.C. R14-2-701 *et seq.* Nothing in the siting statutes invests
25 the Committee with authority to rule on APS Integrated Resource Plan. That authority
26 resides with the Commission and is exercised through its integrated resource planning
27 docket. *See* Docket No. E-00000V-13-0070.

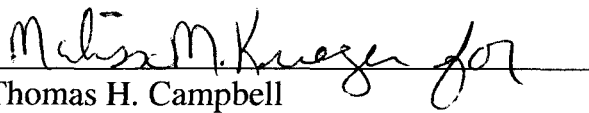
1 Finally, some confusion has resulted from A.R.S. § 40-360.07.B. That provision
2 requires the Commission to “balance, in the broad public interest, the need for an
3 adequate, economical and reliable supply of electric power with the desire to minimize
4 the effect thereof on the environment and ecology of this state.” That standard does not
5 apply to the Committee, rather, it applies only to the Commission when a review of the
6 Committee’s decision is requested by a party pursuant to A.R.S. § 40-360.07.A. In
7 1971, when this provision was adopted, it may well have been that the Commission
8 would already be aware of the need for a project and would have the information
9 necessary to conduct the balancing. In fact, for almost 30 years, need was not addressed
10 in siting proceedings or was addressed only in a limited fashion. With the advent of
11 merchant generation and since the Committee hearings are the only opportunity to
12 develop a record regarding evidence of need, in recent years need has become a key part
13 of Line Siting Committee hearings. *See also Grand Canyon Trust v. Arizona Corp.*
14 *Comm’n*, 210 Ariz. 30, 107 P.3d 356 (App. 2005)

15 **B. Conclusion**

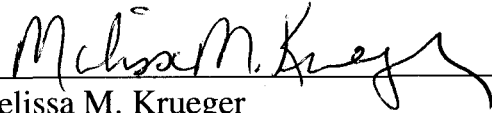
16 For these reasons, APS respectfully requests that these proceedings remain
17 focused squarely on matters within the purview of the Committee, namely the
18 environmental compatibility of the Project and directly related issues addressed in the
19 line siting statutes.

20 RESPECTFULLY SUBMITTED this 15th day of September, 2014.

21 LEWIS ROCA ROTHGERBER, LLP

22
23 
24 Thomas H. Campbell
25 201 East Washington Street, Suite 1200
26 Phoenix, Arizona 85004
27 Attorney for APS
28

ARIZONA PUBLIC SERVICE COMPANY



Melissa M. Krueger
Linda J. Benally
Pinnacle West Capital Corporation
Law Department
400 North 5th Street, MS 8695
Phoenix, Arizona 85004
Attorneys for APS

ORIGINAL and twenty-five (25) copies
of the foregoing filed this 16th day of
September, 2014, with:

The Arizona Corporation Commission
Hearing Division – Docket Control
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing sent via email
this 15th day of September, 2014, to:

John Foreman
Arizona Power Plant and Transmission Line
Siting Committee
Office of the Arizona Attorney General
PAD/CPA
1275 West Washington Street
Phoenix, Arizona 85007
John.Foreman@azag.gov

Lyn Farmer
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007


1 Janice Alward
2 Legal Division
3 Arizona Corporation Commission
4 1200 W. Washington
5 Phoenix, Arizona 85007

6 Coash & Coash, Inc.
7 1802 North 7th Street
8 Phoenix, Arizona 85006
9 staff@coashandcoash.com

10 Daniel Pozefsky
11 Residential Utility Consumer Office
12 1110 West Washington, Suite 220
13 Phoenix, Arizona 85007

14 Patrick J. Black
15 Fennemore Craig, P.C.
16 2394 E. Camelback Road, Suite 600
17 Phoenix, Arizona 85016

18 Rebecca Turner
19 100 S. Ashley Drive, Suite 1400
20 Tampa, FL 33602

21 
22 _____